REMARKS

Status of the Claims

Claims 1-97 were pending. Claims 1-37, 40-44 and 46-97 were withdrawn pursuant to a Restriction Requirement that has been made FINAL and is discussed below. Claims 2, 3, 4 and 38 have been amended as shown above to make explicit that the polynucleotide of the expression cassettes exhibits at least 90% identity to the full-length of the sequence identified in the claim. Claims 78 and 91 have been amended to depend from examined claim 38. Claims 1, 5-37, 39-77 and 97 have been canceled without prejudice or disclaimer. Thus, claims 2-4, 38 and 78-96 are pending of which claim 38 has been examined.

Restriction Requirement

As noted above, the Restriction Requirement has been made FINAL. In this regard, the Examiner asserts that § 803.04 of the MPEP indicating that 10 sequences should be examined together is "only a guideline and not legally binding" and that this application is not eligible for this option because it is not a SPDI application. (Office Action, page 1).

As correctly noted by the Office, it is well settled that two criteria must be met for a proper restriction requirement under M.P.E.P. § 803: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. However, Applicants respectfully submit that the Examiner has not met this burden.

Here, given the high homology between the sequences, the Examiner cannot show that it would impart a serious burden to examine the sequences together. Indeed, the Examiner has not even shown that the nucleotide sequence encode "structurally different envelope glycoproteins" as asserted on page 2 of the Office Action. In fact, the sequences exhibit high homology to each other and a search of the art for sequences relevant to any of SEQ ID NOs:46, 47, 49, 97, 119, 120, 121, 122, 123, 124, 125, 126, 127, 131, 132, or 133 would necessarily reveal art relevant to the other sequences.

In this regard, Applicants again direct attention to the alignment of SEQ ID NOs:120 and 121 submitted with the Response to Restriction Requirement and submitted herewith again for the Examiner's convenience. In addition, Applicants attach hereto an alignment of all of the sequences recited in claim 38 along with SEQ ID NOs: 46 and 47 (claims 2 and 3, depicting common regions of Env). All of these sequences exhibit high homology to each other.

In view of the high degree of homology between the sequences of all the pending claims, it is clear that searching the art for the full-length of any of these sequences would necessarily reveal references relevant to all other sequences and, as such, it would not impart a serious burden on the Examiner to search them together. By contrast, it would certainly impart a serious financial burden

on Applicants to file individual applications to each highly-related sequence. No serious burden on the Examiner coupled with a very serious burden on Applicants does not meet the goal of Restriction practice.

Accordingly, Applicants again submit that the Restriction Requirement as between pending claims 2, 3, 4 and the individual sequences of claim 38 cannot stand because the two criteria of M.P.E.P. § 803 have not been fulfilled.

Thus, Applicants reiterate that claims 2-4 should be examined with claim 38. Furthermore, Applicants request rejoinder of process claims 78-96 when the elected product claims are found allowable.

Finally, Applicants expressly reserve their right under 35 USC §121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application.

Sequence Listing

As the objection to the Sequence Listing was not reiterated, Applicants conclude that the Sequence Listing and accompanying computer readable form accompanying the Preliminary Amendment as filed on May 29, 2003 is acceptable.

IDS

The Examiner has requested, seemingly pursuant to 37 C.F.R. § 1.98(a)(3)(i), a statement identifying the relevance of each document cited in the IDS to the claimed invention. However, it is clear from this statute that such an explanation is required only for information listed that is not in English (37 C.F.R. 1.98(a)(3)(i)):

> A concise explanation of the relevance ...of each patent, publication or other information listed **that is not in the English language**. The concise explanation may be either separate from applicant's specification or incorporated therein.

Therefore, Applicants are not required to provide a concise application for any of the references cited in the IDS. Certainly, the Examiner must consider the IDS filed June 28, 2005, which contains only 8 references.

In sum, the documents submitted in the Information Disclosure Statements in this application should all be considered on their merits.

Inventorship

After the mailing of this Office Action (*i.e.,* on June 28, 2005), Applicants filed a Petition to Correct Inventorship and accompanying documents. Applicants request acknowledgment that the change in inventorship has been entered.

35 U.S.C. § 112, 1st Paragraph, Written Description

Previous claims 38, 39, and 45 were rejected under 35 U.S.C § 112, first paragraph as allegedly not described by the specification as filed. (Office Action, pages 2-5). In particular, it was asserted that the written description requirement was not satisfied because the claims did not limit the polynucleotide sequence to any particular length. *Id.*

By amendment herein, Applicants have amended the claims as shown above to specify that the sequences of the claimed expression cassettes much exhibit at least 90% identity to the full-length of the recited sequences (identified by SEQ ID NO). Thus, the rejection has been obviated.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the claims are now in condition for allowance and request early notification to that effect.

Please direct all further written communications regarding this application to:

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Respectfully submitted,

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